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RECORDATION NO. 9445

JUN 10 1978 - 12 12 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9445-A

JUN 10 1978 - 12 12 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9445-C

JUN 10 1978 - 12 12 PM

INTERSTATE COMMERCE COMMISSION

Burlington Northern Inc.

Lease Financing Dated as of May 1, 1978

8.80% and 8.85% Conditional Sale Indebtedness

Due January 3, 1992

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of May 1, 1978, between United States Trust Company of New York, as Trustee, and General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders;

(b) Agreement and Assignment dated as of May 1, 1978, between General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent;

2(a) Lease of Railroad Equipment dated as of May 1, 1978, between Burlington Northern Inc. and United States Trust Company of New York, as Trustee.

8-1704007

JUN 19 1978

Date

Fee \$ 100

ICC Washington, D. C.

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CRAVATH, N. Y.

CRAVATH, PARIS

CRAVATH, LONDON E.C. 2

(b) Assignment of Lease and Agreement dated as of May 1, 1978, between United States Trust Company of New York, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee-Lessor:

United States Trust Company of New York
130 John Street
New York, N. Y. 10038

(3) Builders:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Owner-Trustee-Lessor, the Builders and the Lessee.

The equipment covered by the aforementioned documents consist of the following:

Forty-nine (49) 3,000 h.p. Model SD40-2 diesel electric locomotives bearing identifying numbers BN7063 through BN7074 and BN7832 through BN7868, both inclusive.

Twenty-two (22) 3,000 h.p. Model C30-7 diesel-electric locomotives bearing identifying numbers BN5545 through BN5566, both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with you official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Burlington Northern Inc.

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

54A

BY HAND

Interstate Commerce Commission
Washington, D.C. 20423

6/19/78

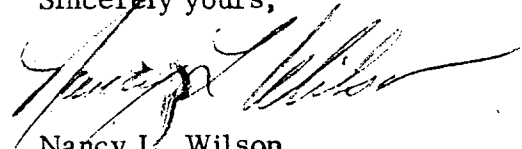
OFFICE OF THE SECRETARY

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **6/19/78** at **12:10pm**,
and assigned recordation number(s) **9445, 9445-A, 9445-B, & 9445-C**

Sincerely yours,



Nancy L. Wilson
Acting Secretary

Enclosure(s)

RECORDATION NO. 9445 Filed & Recorded

JUN 19 1978 - 12 10 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1978

between

UNITED STATES TRUST COMPANY OF NEW YORK,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof

with

J. P. Morgan Interfunding Corp.

and

Connell Rice & Sugar Co., Inc.
(Connell Leasing Company Division)

and

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

GENERAL ELECTRIC COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 1, 1978, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation and GENERAL ELECTRIC COMPANY, a New York corporation (hereinafter collectively called the Builders, or severally the Builder or collectively or severally called the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with J. P. Morgan Interfunding Corp. and Connell Rice & Sugar Co., Inc. (Connell Leasing Company Division) (hereinafter collectively called the Owners and severally an Owner).

WHEREAS the Builders have severally agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment);

WHEREAS the Owner-Trustee is entering into a lease with BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (hereinafter called the Assignee) is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof substantially in the form of Annex E hereto (hereinafter called the Participation Agreement), among the Lessee, the Assignee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1

ASSIGNMENT; DEFINITIONS

1.1. *Contemplated Sources of Purchase Price; Assignment.* The parties hereto contemplate that the Owner-Trustee will furnish 42.5% of the Purchase Price (as defined in paragraph 4.1 of Article 4 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the appropriate Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) among the Builders and the Assignee.

1.2. *Lease Assignment.* In case of such assignment, the Owner-Trustee will assign to the Vendor (as hereinafter defined), as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

1.3. *Meaning of "Builder" and "Vendor".* The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the respective party hereto which has manufactured the units of Equipment to be constructed by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder or Builders, as the context may require, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon a corporation manufacturing and selling equipment hereunder, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

ARTICLE 2

CONSTRUCTION AND SALE

Pursuant to this Agreement, each Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Owner-Trustee, and the Owner-Trustee will (as hereinafter provided) purchase from each Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the applicable Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered by such Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3

INSPECTION AND DELIVERY

3.1. *Place of Delivery.* Each Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto or such other place or places designated from time to time by the Owner-Trustee, freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of paragraph 16.1 of Article 16 hereof or the occurrence of any event of default (as described in paragraph 16.1 of Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, unless it has been assured to its satisfaction that it will receive the full Purchase Price (as hereinafter defined) thereof. Each Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, until such time as such written notice may be cancelled by a further written notice, and (b) until it receives notice from the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and from the Owner-Trustee that the conditions contained in Paragraph 8 of the Participation Agreement have been met.

3.2. *Force Majeure.* Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. *Exclusion of Equipment.* Any Equipment not delivered at the time of receipt of the notice specified in clause (a) of the last sentence of paragraph 3.1 of this Article 3 and any Equipment not delivered and accepted hereunder on or before June 30, 1979, shall be excluded from this Agreement, and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder of such Equipment so excluded and the Owner-Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 of Article 4 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by a Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder

relating to the Equipment (hereinafter called the Purchase Order) and the Owner-Trustee will reassign, transfer and set over to such Builder or the Lessee, as their respective interests shall appear, all the right, title and interest of the Owner-Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. *Inspection.* During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee), and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with paragraph 10.1 of Article 10 hereof; *provided, however*, that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof. By §2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to §2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

3.5. *Builder's Responsibilities After Delivery.* On delivery by a Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, such Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. *Meaning of "Purchase Price"; Exclusion of Units.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2 of this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder of such Equipment (and any assignee of the Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. *Designation of Equipment; Settlement and Closing Dates.* All units of Equipment delivered and accepted hereunder (i) on or prior to December 31, 1978, shall be designated Schedule A Equipment and (ii) after December 31, 1978, but on or prior to June 30, 1979, shall be designated Schedule B Equipment. The Schedule A Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The Schedule B Equipment shall be settled for in one group of the Equipment of each Builder delivered to and accepted by the Owner-Trustee as is also provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified by the Lessee by six days' written notice thereof with the concurrence of the Owner-Trustee, the Assignee and the Builder of such Group of Equipment, but in no event shall such date be later than June 30, 1979. Such notice shall specify the aggregate Purchase Price of such group and a copy thereof shall be sent by the Lessee to the Builder of

such Group, the Assignee and the Owner-Trustee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder thereof shall present to the Owner-Trustee and the Lessee the invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. *Indebtedness of Owner-Trustee to Vendor.* Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 42.5% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 13 annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in installments under this subparagraph (b) being hereinafter called the Conditional Sale Indebtedness).

4.4. *Conditional Sale Indebtedness; Payment Dates; Interest.* (1) The installments of the Conditional Sale Indebtedness shall be payable annually on January 3 in each year, commencing January 3, 1980 to and including January 3, 1992, each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at a rate per annum which is sufficient to pay the applicable Debt Rates of the Investors set forth in Appendix I of the Participation Agreement. Interest on the unpaid balance of the Conditional Sale Indebtedness shall be payable (i) on January 3, 1979, to the extent accrued from the Closing Date in respect of which such indebtedness was incurred to, but not including, January 3, 1979, and (ii) to the extent accrued thereafter, on January 3 and July 3 in each year, commencing July 3, 1979, to and including January 3, 1992 (each such date being hereinafter called an Interest Payment Date). The amounts of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest and of the installments of interest payable on the Interest Payment Dates shall completely amortize the Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date and on each Interest Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

4.5. *Calculation of Interest.* Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. *Overdue Rate.* The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 9.85% per annum (hereinafter called the Overdue Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. *Currency of Payment.* All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 or § 16.1 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

4.8. *Liability of Owner-Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments.* Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Owner-Trustee or any assignee of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement (with the exception only of the payments to be made pursuant to subparagraph (a) of paragraph 4.3 of this Article, the interest payable on January 3, 1979, pursuant to paragraph 4.4 of this Article, and the proviso to paragraph 13.3 of Article 13 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto), insofar as it relates to the Lessee or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 of Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 of Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under §13 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Lessee to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under subparagraph A of §13.1 of the Lease) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof

required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5

TITLE TO THE EQUIPMENT

5.1. *Vendor to Retain Title; Accessories are Part of Equipment.* The Vendor shall and hereby does retain its title and interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of title is solely to secure performance by the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, or (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. *Obligations Upon Payment of Conditional Sale Indebtedness.* Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its title to and interest in the Equipment to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment and (c) pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

ARTICLE 6

TAXES

6.1. *Indemnification of Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owners, the Vendor, the Lessee, the Trust Estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, or franchise taxes measured by net income of the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6; *provided, however,* that the Owner-Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 of this Article 6.

6.2. *Claims; Contests; Refunds.* If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; *provided; however,* that no event of default set forth in paragraph 16.1 of Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall

promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

6.4. *Survival.* All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

6.5. *Article 6 Subject to Articles 4 and 23.* The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in paragraph 4.8 of Article 4 hereof and in Article 23 hereof.

ARTICLE 7 MAINTENANCE; CASUALTY OCCURRENCES

7.1. *Maintenance.* Subject to the limitations contained in Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. *Casualty Occurrences.* In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or the Purchase Price of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in the Lease), the Owner-Trustee shall, subject to the limitations contained in paragraph 4.8 of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 of Article 4 hereof.

7.3. *Obligations Upon Payment of Casualty Value.* Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver to the Owner-Trustee, at the expense of the Owner-Trustee, an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner-Trustee may make clear upon the public records the title of the Owner-Trustee to such unit.

7.4. *Casualty Value.* The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) of Article 4 hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; *provided, however*, that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1979, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all units of the Equipment then subject to this Agreement, the total number, description and road numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. *Marking of Equipment.* The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner-Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. *No Designations of Ownership.* Except as provided in paragraph 10.1 of this Article 10, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

10.3. *Article 10 Subject to Article 23.* All obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

11.1. *Compliance with Laws and Rules.* During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; *provided, however,* that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

11.2. *Article 11 Subject to Article 23.* All obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 12

POSSESSION AND USE

12.1. *Possession and Use of Equipment by Owner-Trustee.* The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by a Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. *Lease Permitted; Lease Subordinate; No Amendment or Termination.* The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall, except as provided in §15.2 of the Lease, be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. *Other Leases of Equipment.* Subject to the rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. *Owner-Trustee to Discharge Liens.* The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's title therein and will promptly discharge any such lien, charge or security interest which arises; but the Owner-Trustee shall not be required to pay or discharge any such

claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. *No Breach for Certain Liens.* This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent or being contested in good faith by appropriate proceedings, promptly commenced and diligently prosecuted.

13.3. *Article 13 Subject to Article 23 Except in Certain Instances.* All obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; *provided, however*, that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or its successors or assigns, and to the extent that it receives funds sufficient for such purpose from the Owners as required by the Trust Agreement, from, through or under the Owners and their successors and assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein; but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

ARTICLE 14

INDEMNITIES AND WARRANTIES

14.1. *Indemnification.* The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever (other than Taxes which are provided for in Article 6 hereof) which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to a Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from any tort, breach of warranty or failure to perform any covenant hereunder of such Builder or is covered by such Builder's patent indemnification referred to in paragraph 14.4 of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person

seeking to enforce the indemnification may proceed directly against the Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person; and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in paragraph 16.1 of Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner-Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

14.2. *Survival; No Subrogation.* The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. *Owner-Trustee Not Released if Equipment Damaged or Lost.* The Owner-Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. *Warranties of Builders; Patent Indemnities; Subject to Article 23.* The agreement of the parties relating to the Builders' warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. All obligations of the Owner-Trustee pursuant to paragraphs 14.1, 14.2 and 14.3 of this Article are subject to the provisions of Article 23 hereof.

ARTICLE 15

ASSIGNMENTS

15.1. *Assignment by Owner-Trustee.* Except as provided in Article VII of the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. *Assignment by Vendor.* All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve a Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and

indemnities referred to in Article 14 hereof or relieve the Owner-Trustee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. *Notice of Assignment by Vendor.* Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. *No Set-Off Against Conditional Sale Indebtedness Upon Assignment.* The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee against and only against the Builders.

ARTICLE 16

DEFAULTS

16.1. *Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full (i) the principal of and interest on the Conditional Sale Indebtedness when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date payment is due and payable or (ii) any other sum payable by the Owner-Trustee hereunder when payment thereof shall be due (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in

writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Owner-Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease); *provided, however*, that such termination shall not be in derogation of or impair the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under §13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in §13 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. In the case of an event of default under subparagraph (c) above, the Owner-Trustee shall have the option, for a period of 30 days after the commencement of such event of default, to prepay all, but not less than all, the then outstanding Conditional Sale Indebtedness plus interest accrued to the date of such payment.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner-Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17

REMEDIES

17.1. *Vendor May Take Possession of Equipment.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner-Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. *Assembling of Equipment for Vendor.* In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to §14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Owner-Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner-Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. *Vendor May Dispose of or Retain Equipment.* At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of

the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; *provided, further*, that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. *Vendor May Sell Equipment; Owner-Trustee's Right of Redemption.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. *Sale of Equipment by Vendor.* Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. *Effect of Remedies and Powers and Exercise Thereof.* Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any

payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. *Deficiencies.* If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

17.8. *Expenses.* The Owner-Trustee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 of Article 4 and Article 23 hereof.

17.9. *Remedies Subject to Mandatory Legal Requirements.* The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. *Conflict with State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. *Waiver of Notices.* Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Article 23 hereof, the Owner-Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada; and the Owner-Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDER

Each Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee, this Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. *Article and Paragraph Headings for Convenience Only.* All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. *Effect and Modification of Agreement.* Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

ARTICLE 22

NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with a copy each to J. P. Morgan Interfunding Corp., 522 Fifth Avenue, New York, N.Y. 10022 attention of Lease Administration, and to Connell Leasing Company Division, 45 Cardinal Drive, Westfield, New Jersey 07902, attention of Grover Connell, President,

(b) to each Builder, at the addresses specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. *No Recourse Against Certain Persons.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. *Satisfaction of Certain Covenants.* The obligations of the Owner-Trustee under paragraph 7.1 of Article 7, paragraphs 17.2, 17.7 and 17.8 of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof) by the Lessee's execution and delivery of the Lease. The Owner-Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for a default. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; *provided, however*, that the Vendor shall consent to any agreement in writing between the Lessee and the Owner-Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner-Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. *No Personal Liability of Owner-Trustee.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Owner-Trustee in its individual capacity, including its successors and assigns, or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed hereunder by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owners on account of any representation, undertaking or agreement hereunder of the Owner-Trustee or the Owners (except for the obligations of the Owner-Trustee to make the payments pursuant to subparagraph (a) of paragraph 4.3 of Article 4 hereof, to pay the interest payable on January 3, 1979, pursuant to paragraph 4.4 of Article 4 hereof and to comply with the provisions of the proviso to Article 13.3 of Article 13 hereof), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that neither the Owner-Trustee in its fiduciary or individual capacity nor the Owners shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner-Trustee or the Owners) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Owner-Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25
EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by P.K. Haglund
Vice President

[CORPORATE SEAL]

Attest:

M.H. Thomas
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by
General Manager
Domestic Locomotive Marketing Department

[CORPORATE SEAL]

Attest:

.....
Attesting Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee as aforesaid,

by J. Bouer
Assistant Vice President

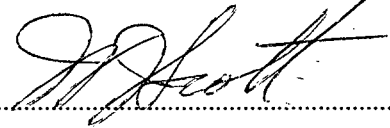
[SEAL]

Attest:

Thomas B. Zebrowski
Assistant Secretary

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 16th day of JUNE, 1978, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



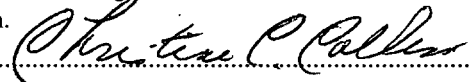
[Notarial Seal]

My Commission expires January 17, 1979

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

GEORGE BOSWELL

On this 14th day of June, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Notarial Seal]

My Commission expires _____

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 31-4624735
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1980

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE } ss.:

On this _____ day of _____, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is the General Manager—Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

SCHEDULE IA
8.80%
Allocation Schedule of Each
\$1,000,000 of Conditional
Sale Indebtedness Payable
In (i) One Interim Payment of Interest Only
on January 3, 1979,
(ii) 26 Semiannual Installments of Interest
Commencing July 3, 1979; and
(iii) 13 Annual Installments of Principal
Commencing January 3, 1980

<u>Install-</u> <u>ment</u> <u>No.</u>		<u>Debt</u> <u>Service</u>	<u>Interest</u> <u>Payment</u>	<u>Principal</u> <u>Recovery</u>	<u>Ending</u> <u>Principal</u>
		\$	\$	\$	\$
(Interim Payment)	January 3, 1979	*	*	-0-	1,000,000.00
1	July 3, 1979	44,000.00*	44,000.00*	—	1,000,000.00
2	January 3, 1980	81,677.21	44,000.00	37,677.21	962,322.79
3	July 3, 1980	42,342.20	42,342.20	—	962,322.79
4	January 3, 1981	83,348.61	42,342.20	41,006.41	921,316.38
5	July 3, 1981	40,537.92	40,537.92	—	921,316.38
6	January 3, 1982	85,167.70	40,537.92	44,629.78	876,686.60
7	July 3, 1982	38,711.13	38,711.13	—	876,686.60
8	January 3, 1983	87,284.43	38,711.13	48,573.86	828,113.30
9	July 3, 1983	36,436.99	36,436.99	—	828,113.30
10	January 3, 1984	89,302.28	36,436.99	52,865.29	775,248.01
11	July 3, 1984	34,110.91	34,110.91	—	775,248.01
12	January 3, 1985	91,647.44	34,110.91	57,536.53	717,711.48
13	July 3, 1985	31,579.31	31,579.31	—	717,711.48
14	January 3, 1986	94,199.81	31,579.31	62,620.50	655,090.98
15	July 3, 1986	28,824.00	28,824.00	—	655,090.98
16	January 3, 1987	96,977.72	28,824.00	68,153.72	586,937.26
17	July 3, 1987	25,825.24	25,825.24	—	586,937.26
18	January 3, 1988	128,009.58	25,825.24	102,184.34	484,752.92
19	July 3, 1988	21,329.13	21,329.13	—	484,752.92
20	January 3, 1989	32,542.58	21,329.13	111,213.45	373,539.47
21	July 3, 1989	16,435.74	16,435.74	—	373,539.47
22	January 3, 1990	37,476.12	16,435.74	121,040.38	252,499.09
23	July 3, 1990	11,109.96	11,109.96	—	252,499.09
24	January 3, 1991	142,845.59	11,109.96	131,735.63	120,763.46
25	July 3, 1991	5,313.59	5,313.59	—	120,763.46
26	January 3, 1992	126,077.05	5,313.59	120,763.46	-0-
		\$1,753,112.24	\$753,112.24	\$1,000,000.00	

* Interest only on the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

SCHEDULE IB

8.85%

Allocation Schedule of Each \$1,000,000 of Conditional Sale Indebtedness Payable

In (i) One Interim Payment of Interest Only
on January 3, 1979,

(ii) 26 Semiannual Installments of Interest
Commencing July 3, 1979; and

(iii) 13 Annual Installments of Principal
Commencing January 3, 1980

Install- ment No.		Debt Service	Interest Payment	Principal Recovery	Ending Principal
		\$	\$	\$	\$
(Interim Payment)	January 3, 1979	*	*	-0-	1,000,000.00
1	July 3, 1979	44,250.00*	44,250.00*	—	1,000,000.00
2	January 3, 1980	81,927.21	44,250.00	37,677.21	962,322.79
3	July 3, 1980	42,582.78	42,582.78	—	962,322.79
4	January 3, 1981	83,589.19	42,582.78	41,006.41	921,316.37
5	July 3, 1981	40,768.25	40,768.25	—	921,316.37
6	January 3, 1982	85,398.03	40,768.25	44,629.78	876,686.60
7	July 3, 1982	38,793.38	38,793.38	—	876,686.60
8	January 3, 1983	87,366.68	38,793.38	48,573.30	828,113.30
9	July 3, 1983	36,644.01	36,644.01	—	828,113.30
10	January 3, 1984	89,509.30	36,644.01	52,865.20	775,248.01
11	July 3, 1984	34,304.73	34,304.73	—	775,248.01
12	January 3, 1985	91,841.26	34,304.73	57,536.53	717,711.48
13	July 3, 1985	31,758.73	31,758.73	—	717,711.48
14	January 3, 1986	94,379.23	31,758.73	62,620.50	655,090.99
15	July 3, 1986	28,987.78	28,987.78	—	655,090.99
16	January 3, 1987	97,141.50	28,987.78	68,153.72	586,937.26
17	July 3, 1987	25,971.97	25,971.97	—	586,937.26
18	January 3, 1988	128,156.31	25,971.97	102,184.34	484,752.92
19	July 3, 1988	21,450.32	21,450.32	—	484,752.92
20	January 3, 1989	132,663.77	21,450.32	111,213.45	373,539.47
21	July 3, 1989	16,529.12	16,529.12	—	373,539.47
22	January 3, 1990	137,569.50	16,529.12	121,040.38	252,499.09
23	July 3, 1990	11,173.09	11,173.09	—	252,499.09
24	January 3, 1991	142,908.72	11,173.09	131,735.68	120,763.46
25	July 3, 1991	5,343.78	5,343.78	—	120,763.46
26	January 3, 1992	126,107.24	5,343.78	120,763.46	-0-
		\$1,757,115.88	\$757,115.88	1,000,000.00	

* Interest only on the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

Annex A
to
Conditional Sale Agreement

- Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 (hereinafter called EMD). General Electric Company, a New York corporation, having an address at 2901 East Lake Road, Erie, Pennsylvania 16531 (hereinafter called GE) (EMD and GE hereinafter being collectively called the Builders).
- Item 2: The Schedule A Equipment shall be settled for in no more than five Groups: the first Group shall be settled for on or after July 25, 1978; the second Group on or after August 15, 1978; the third Group on or after October 9, 1978, the fourth Group on or after November 1, 1978; and the fifth Group on or after December 1, 1978, and before January 1, 1979.
The Schedule B Equipment shall be settled for in one Group of Equipment of each Builder on or after January 2, 1979, and on or before June 30, 1979, unless the parties otherwise agree.
- Item 3: (a) EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement) and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.
EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.
EMD further agrees with the Owner-Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Owner-Trustee of any of its rights under this Item 3(a).
- (b) GE warrants to the Owner-Trustee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two (2) years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that the Equipment delivered by GE under this Agreement does not meet the warranties specified above, and the Owner-Trustee notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse, a repaired or replacement part. If requested by GE, the Owner-Trustee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE. The foregoing shall constitute the sole remedy of the Owner-Trustee and the sole liability of GE.

The liability of GE to the Owner-Trustee (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Owner-Trustee, or any third party other than GE. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profits or revenues, loss of the use of the Equipment or any associated equipment, damage to the associated equipment, cost of capital, cost of substitute products, facilities, services or replacements, downtime costs, or claims of customers of the Owner-Trustee, the Owners or the Lessee for such damages.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDERS EXCEPT THE WARRANTIES SET OUT ABOVE.

- Item 4: (a) EMD shall defend any suit or proceeding brought against the Owner-Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Owner-Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Owner-Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid Conditional Sale Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Owner Trustee.

EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

- (b) Except in cases of designs specified by the Owner-Trustee and/or the Lessee and not developed or purported to be developed by GE, and articles and materials specified by the Owner-Trustee and/or Lessee and not manufactured by GE, GE warrants for itself that Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Owner-Trustee or Lessee so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against Owner-Trustee or Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Owner-Trustee and the Lessee the right to continue using said Equipment or part thereof, or replace same within six months of such injunction with non-infringing Equipment or part thereof acceptable to the Owner-Trustee, or modify same so it becomes non-infringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Owner-Trustee or Lessee, but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Owner-Trustee and Lessee will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Owner-Trustee and Lessee of any claim known to GE from which liability may be charged against the Owner-Trustee or Lessee hereunder and the Owner-Trustee and Lessee will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of each of the Builders for patent infringement by the Equipment or any part thereof.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$45,690,500 plus 100/57.5ths of the amount, if any, by which the Investors' investments are increased pursuant to Paragraph 2 of the Participation Agreement.

ANNEX B

TO

CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	49	BN 7063-7074 BN 7832-7868	\$635,100	\$31,119,900	July through October 1978, at Fridley, Minnesota,
3,000 h.p. Model C30-7 diesel-electric locomotive	GE	3390G	Erie, Pennsylvania	22	BN 5545-5566	662,300	14,570,600 \$45,690,500	September through November 1978, at Erie, Pennsylvania

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PARTICIPATION AGREEMENT

among

BURLINGTON NORTHERN INC.,
as Lessee,

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent,

J. P. MORGAN INTERFUNDING CORP.,
as Owner,

CONNELL RICE & SUGAR CO., INC.
(Connell Leasing Company Division),
as Owner,

UNITED STATES TRUST COMPANY OF NEW YORK,
as Owner-Trustee,

and the **PARTIES NAMED IN APPENDIX I HERETO**

Dated as of May 1, 1978

[Covering 49 GMC-EMD and 22 G.E. 3,000 h.p. Diesel Electric Locomotives]

8.80% and 8.85% Conditional Sale Indebtedness due January 3, 1992

PARTICIPATION AGREEMENT (hereinafter called the Agreement) dated as of May 1, 1978, among BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation (hereinafter called the Agent), J. P. MORGAN INTERFUNDING CORP., a Delaware corporation, CONNELL RICE & SUGAR CO., INC. (Connell Leasing Company Division), a New Jersey corporation (the latter two corporations hereinafter individually called an Owner and collectively called the Owners), UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company (hereinafter called the Owner-Trustee), not individually but solely in its capacity as Trustee under a Trust Agreement, in substantially the form attached as Exhibit D hereto, with the Owners (hereinafter called the Trust Agreement), and the PARTIES NAMED IN APPENDIX I HERETO (hereinafter called the Investors).

WHEREAS each Owner pursuant to the Trust Agreement has authorized and directed the Owner-Trustee to purchase certain units of railroad equipment (hereinafter called the Equipment) from General Motors Corporation (Electro-Motive Division) and from General Electric Company (hereinafter called severally the Builder and collectively the Builders), pursuant to a Conditional Sale Agreement (hereinafter called the Conditional Sale Agreement) substantially in the form of Exhibit A hereto; and each Builder will retain a security interest in the units of Equipment constructed, sold and delivered by it pursuant to the Conditional Sale Agreement (such units with respect to each Builder being hereinafter sometimes called its Equipment) until the Owner-Trustee fulfills its obligations under the Conditional Sale Agreement;

WHEREAS the Lessee will lease from the Owner-Trustee all the units of the Equipment so purchased, or such lesser number of units as are delivered and accepted under the Conditional Sale Agreement, pursuant to a Lease of Railroad Equipment in substantially the form attached to the Conditional Sale Agreement as Annex C thereto (hereinafter called the Lease);

WHEREAS the Investors will finance 57.5% of the cost of the Equipment by investing in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and the Owners will finance 42.5% of the cost of the Equipment by making funds available to the Owner-Trustee under the Trust Agreement;

WHEREAS the Lessee will agree to indemnify each Owner pursuant to Indemnity Agreements (hereinafter each called an Indemnity Agreement and collectively called the Indemnity Agreements), in substantially the form attached as Exhibit E hereto, between the Lessee and each Owner, against certain losses, liabilities or expenses incurred or suffered by such Owner; and

WHEREAS the security interest of each Builder in its Equipment will be assigned to the Agent, acting on behalf of the Investors, pursuant to an Agreement and Assignment (hereinafter called the Assignment) in substantially the form of Exhibit B hereto, and the Lease will be assigned to the Agent pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) in substantially the form attached to the Conditional Sale Agreement as Annex D thereto until the Owner-Trustee fulfills all its obligations under the Conditional Sale Agreement and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (hereinafter called the Consent) in the form attached to the Lease Assignment.

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Owner-Trustee will enter into the Conditional Sale Agreement and pursuant thereto will purchase, subject to the conditions hereinafter provided, the units of Equipment described in Annex B of the Conditional Sale Agreement having an aggregate Purchase Price (as defined in the Conditional Sale Agreement) not exceeding the amount set forth in Item 5 of Annex A of the Conditional Sale Agreement.

On or before the First Delivery Date (as hereinafter defined), the Owner-Trustee and the Lessee will enter into the Lease in respect of the Equipment, each Owner and the Lessee will enter into an Indemnity Agreement and the Owner-Trustee will enter into the Lease Assignment in respect of the Lease with the Agent.

The Lessee covenants with the Owner-Trustee, and with the Builders as third party beneficiaries hereof, that, in the event of the exclusion of any unit of Equipment from the Conditional Sale Agreement as provided in paragraph 3.3 of Article 3 thereof, the Lessee will be obligated to accept all such units completed and delivered by the Builders and to pay the full purchase price therefor when due, all in accordance with the terms of the applicable Purchase Order (as defined in said paragraph 3.3) therefor, and the Owner-Trustee will reassign, transfer and set over to the Lessee and the applicable Builder, as their respective interest shall appear, all the right, title and interest of the Owner-Trustee in and to the units so excluded.

2. Each Investor will pay to the Agent, in immediately available funds, not later than 11:00 a.m., Baltimore time, on the date or dates set forth opposite the Investor's name in Appendix I hereto (hereinafter called the Deposit Dates), an amount equal to the amount of the Investment set forth opposite each such Investor's name in Appendix I hereto with respect to each such Deposit Date. Such Deposit Dates may be moved forward or delayed by no more than four weeks by notice given by the Lessee to the Agent and each Investor not later than ten days prior to the earlier of (i) the regularly scheduled Deposit Date or (ii) the Deposit Date to which the change is to be made. The Agent will give to each Investor written notice of the payment to be made on each Deposit Date at least five business days prior to such Deposit Date. The Lessee shall have the right to increase the aggregate investment of each Investor, on a pro rata basis, by an amount up to but not exceeding five per cent of the aggregate commitment of such Investor as set forth in Appendix I hereto, by giving written or telegraphic notice to the Agent not later than twelve days prior to any Deposit Date, specifying the amount of such increase. Each time the Lessee shall give such notice, the Agent will forthwith give each Investor notice of the amount of its increased investment; and each Investor shall thereupon become obligated to pay or cause to be paid to the Agent in immediately available funds, not later than 11:00 a.m., Baltimore time, on such Deposit Date the amount of its increased investment as specified in said notice from the Agent.

Upon payment to the Agent of the amount required to be paid by an Investor pursuant to this Paragraph 2 on a Deposit Date, the Agent will execute and deliver to such Investor (or, upon the written request of such Investor, to the nominee or nominees of such Investor), a certificate or certificates of interest with respect to such payment substantially in the form annexed hereto as Exhibit C containing the appropriate information and dated such Deposit Date.

So long as, to the actual knowledge of the Agent, the Lessee is not in default under this Agreement and no event of default or event which with lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default under the Conditional Sale Agreement shall have occurred and be continuing (any such default, event of default or event being hereinafter called a Default), the Agent will, upon the written direction of the Lessee (which shall specify that, to the knowledge of the Lessee, no Default has occurred and is continuing), invest and reinvest (whether through outright purchase or repurchase agreements) the moneys deposited with it pursuant to this Paragraph 2 in (i) bonds or other obligations which as to principal and interest constitute direct obligations of the United States of America or are issued or guaranteed by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States and for which the full faith and credit of the United States Government is pledged to provide for the payment of principal and interest, (ii) certificates of deposit issued by or bankers' acceptances drawn on and accepted by commercial banks which are members of the federal reserve system with total deposits of at least \$1,000,000,000, and which at the time of such investment have, or whose parent companies have, outstanding publicly-held senior debt securities rated A or better by a nationally recognized rating service, (iii) obligations issued or guaranteed by any state of the United States or the District of Columbia, or any political subdivision of any such state or District, rated AA or better by a nationally recognized rating service, (iv) finance company paper issued by finance companies whose parent companies have outstanding publicly-held debt securities rated AA or better by a nationally recognized rating service, or commercial paper, in both the case of finance company paper and commercial paper rated A-1 or P-1, or their equivalents, by Standard & Poor's Corporation or Moody's Investors

Service, Inc., respectively, or their successors, except such paper of any "related person" of the Lessee or the Owners as that term is defined by Section 103(b)(6)(C) of the Internal Revenue Code, and except such paper of any person which is not incorporated in the United States if the aggregate investments in such paper of such person shall at any time exceed \$1,000,000, or (v) repurchase agreements fully secured by any one or more of the obligations referred to in clause (i) above, in each case of clauses (i) through (v), maturing in not more than 90 days from the date of such investment (but not later than June 30, 1979) (such investments being hereinafter called Investments). Upon any sale or payment at maturity of any Investment, the proceeds thereof, plus any interest received by the Agent thereon, shall be held by the Agent for application pursuant to Paragraph 9 hereof. If such proceeds (plus such interest) shall be less than the cost (including accrued interest) thereof, the Owner-Trustee will pay to the Agent an amount equal to such deficiency (hereinafter called the Investment Deficiency) on or before the date the Agent shall be required to pay such amount or any portion thereof to the Builders or the Investors pursuant to Paragraph 9 hereof. Any payment in respect of such Investment Deficiency shall be held and applied by the Agent in like manner as the proceeds of the sale of Investments.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland or New York, New York, are authorized or obligated to remain closed. All interest under this Agreement (including payments made pursuant to Paragraph 9 hereof) shall be calculated on the basis of a 360-day year of twelve 30-day months. The rate of interest payable under this Agreement to each Investor shall be the applicable rate set forth opposite the name of such Investor in Appendix I hereto (hereinafter called the Debt Rate).

As soon as practicable after delivery to each Investor of the certificate or certificates of interest, the Agent will also deliver to such Investor a schedule of payments reflecting the dates and amounts of principal and interest payments to be made in respect of such certificate. Each Investor, simultaneously with the final payment to it of all amounts payable in respect of such certificate, will surrender such certificate to the Agent.

Pursuant to the Assignment the Agent will acquire from each Builder all its right, security title and interest under the Conditional Sale Agreement, except as specifically excepted by the Assignment. Pursuant to the Lease Assignment, the Agent will acquire for security purposes the rights of the Owner-Trustee in, to and under the Lease.

The forms of the Exhibits annexed to this Agreement are hereby approved by the Investors. The Agent will not enter into or consent to any modification or supplement to or, waiver with respect to, any of such forms that could adversely affect the interests of the Investors without the prior written approval of the Investors, it being understood and agreed that changes in the provisions of the Lease which are not intended or are not necessary to satisfy the obligations of the Owner-Trustee under the Conditional Sale Agreement shall not be deemed to affect adversely the interests of the Investors.

The Agent will hold the moneys deposited with it pursuant hereto and the rights under the Conditional Sale Agreement acquired under the Assignment, security title to the Equipment following its delivery and acceptance thereunder, as provided in the Assignment and the Conditional Sale Agreement, the security interest in the Lease and any payments received by it pursuant to the Lease, in trust for the benefit of the Investors. It is expressly understood and agreed that the obligations of the Agent hereunder as such title holder and with respect to the payments to the Investors to be made by the Agent are only those expressly set forth herein.

3. The Lessee represents and warrants to the Owners, the Owner-Trustee, the Agent and the Investors as follows:

(a) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) The Lessee has corporate power and authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Consent and the Indemnity Agreements and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Agreement, the Lease, the Consent and the Indemnity Agreements have been duly authorized, and have been, or will be on or before delivery of any unit of Equipment, duly executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute or will then constitute valid, legal and binding agreements, enforceable against the Lessee in accordance with their terms.

(c) There are no actions, suits or proceedings, whether or not purportedly on behalf of the Lessee, pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property rights of the Lessee at law or in equity, or before any commission or other administrative agency, which, if determined adversely to the Lessee, would materially and adversely affect the condition, financial or otherwise, of the Lessee or its ability to perform its obligations under this Agreement, the Lease, the Consent or the Indemnity Agreements.

(d) Neither the execution and delivery of this Agreement, the Lease, the Consent or the Indemnity Agreements nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, nor compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon the Equipment pursuant to the terms of any such agreement or instrument, other than any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Agent. The Lessee is not in default, and no event has occurred which, with the giving of notice or lapse of time or both would be a default, under any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it or its property may be bound which would materially and adversely affect the Lessee's ability to perform its obligations under this Agreement, the Lease, the Consent or the Indemnity Agreements.

(e) Neither the execution and delivery by the Lessee of this Agreement, the Lease, the Consent and the Indemnity Agreements nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, nor compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality.

(f) Prior to the delivery and acceptance of any unit of Equipment under the Lease, the Conditional Sale Agreement, the Assignment, the Lease, the Lease Assignment and the Consent will have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in *The Canada Gazette* in accordance with said Section 86 and such filing, recordation and deposit will protect the Agent's and the Owner-Trustee's interests in and to the Lease and in and to the Equipment and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government is necessary in order to protect the interests of the Agent or the Owner-Trustee under the Conditional Sale Agreement or the Lease in and to the Equipment in the United States of America or under the Lease in Canada or any Province thereof.

(g) The Lessee is not entering into this Agreement or the Lease, or any other transaction contemplated hereby and thereby, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, any Owner, any Builder, any Investor or the Owner-Trustee, in its individual capacity, is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974 (hereinafter called ERISA). The Lessee covenants that it will not sublease the

Equipment subject to the Lease to any person which is at the time a party in interest with respect to any employee benefit plan the assets of which were used by any Owner or any Investor in making its investment pursuant to this Agreement, all within the meaning of ERISA.

(h) No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to its knowledge, necessary for the execution, delivery and performance of this Agreement, the Conditional Sale Agreement, the Lease, the Assignment, the Lease Assignment and the Consent.

(i) The Lessee has not directly or indirectly offered or sold any of the Conditional Sale Indebtedness to, solicited offers to buy any of the Conditional Sale Indebtedness from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any of the Conditional Sale Indebtedness with, any person so as to require registration of the sale of the Conditional Sale Indebtedness in accordance with the provisions of the Securities Act of 1933, as amended, or to require the qualification of the Conditional Sale Agreement or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939. The Lessee will not offer any conditional sale indebtedness to, or solicit any offer to buy any thereof from, any other person or approach or negotiate with any other person in respect thereof, so as to require registration of the sale of the Conditional Sale Indebtedness in accordance with the provisions of said Securities Act.

4. Each Owner represents and warrants to the Owner-Trustee, the Lessee, the Agent and the Investors and the other Owner as follows:

(a) Such Owner is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation.

(b) Such Owner has the power and authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, its Indemnity Agreement and the Trust Agreement and to fulfill and comply with the terms, conditions and provisions hereof and thereof.

(c) The Trust Agreement has been duly authorized, executed and delivered by such Owner and, assuming due authorization, execution and delivery by the Owner-Trustee and the other Owner, is a legal and valid instrument binding on such Owner. Its Indemnity Agreement has been duly authorized, executed and delivered by such Owner, and assuming due authorization, execution and delivery by the Lessee, is a legal and valid instrument binding on such Owner. This Agreement has been duly authorized, executed and delivered by such Owner and, assuming due authorization, execution and delivery by the Owner-Trustee, the Lessee, the Agent, the Investors and the other Owner, is a legal and valid instrument binding on such Owner.

(d) Such Owner is making its investment in the Equipment (pursuant to the Trust Agreement and this Agreement) with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan), all within the meaning of ERISA. Such Owner covenants that it will not transfer its interest acquired pursuant to this Agreement (and the Trust Agreement) directly or indirectly to, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan with respect to which the Lessee, such Owner, the other Owner, the Builders, any Investor or the Owner-Trustee in its individual capacity is at the time a party in interest, all within the meaning of ERISA.

5. Each Investor severally represents to the Owner-Trustee, the Lessee and the Owners as follows:

(a) Such Investor is acquiring its interest in the aggregate Conditional Sale Indebtedness for its own account, or for the account of one or more pension or trust funds or other institutional accounts, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same; *provided, however*, that the disposition of its property shall at all times be within its control.

(b) Such Investor understands that the interests of the Investors in the Conditional Sale Indebtedness have not been registered under the Securities Act of 1933 by reason of exemption from the registration requirements of said Act pursuant to Section 4(2) thereof and that its interest in the

Conditional Sale Indebtedness must be held indefinitely unless a subsequent disposition thereof is not in violation of such Act. Each Investor further understands that the exemption from registration afforded by Rule 144 for securities issued under said Securities Act depends on the satisfaction of various conditions and that Rule 144 does not afford a meaningful basis for sale of its interest in the Conditional Sale Indebtedness.

(c) If such Investor is acquiring any interest in the Conditional Sale Indebtedness as trustee or agent for more than one institutional account, except to the extent it has advised the Owner-Trustee and Messrs. Cravath, Swaine & Moore in writing, such Investor has sole investment discretion with respect to such accounts and the aggregate principal amount of interest in the Conditional Sale Indebtedness being acquired for any single account is not less than \$150,000.

(d) If such Investor is acquiring any interest in the Conditional Sale Indebtedness as trustee or agent for an institutional account, such Investor has full power to make the foregoing representations on behalf of each institutional account for which it is so acting. Such Investor further represents that it has full power and authority to execute and deliver this Agreement and carry out its terms.

(e) Such Investor is not acquiring its interest in the Conditional Sale Indebtedness directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan) with respect to which the Lessee, any Owner, any Builder or the Owner-Trustee in its individual capacity is a party in interest, all within the meaning of ERISA.

(f) Such Investor is not a registered investment company nor a company controlled by a registered investment company within the meaning of the Investment Company Act of 1940.

Each Investor hereby agrees that any transfer of all or any part of its interest in the Conditional Sale Indebtedness shall be upon the express condition that the transferee thereof shall be bound by the terms of this Agreement, that such transfer does not subject this transaction to the registration provisions of the Securities Act of 1933 and that its transferee will represent that ERISA will not be violated as a result of such transaction. Prior to any such transfer, such Investor shall notify the Agent in writing thereof; and the Agent shall cause to be prepared and delivered to such Investor an appropriate agreement, to be entered into among such Investor, such transferee and the Agent, evidencing such transfer upon the terms hereof.

6. The Owner-Trustee represents and warrants to the Owners, the Lessee, the Agent and the Investors as follows:

(a) The Owner-Trustee is a trust company duly organized, validly existing and in good standing under the laws of the State of New York.

(b) The Owner-Trustee has the corporate power and authority and legal right under New York and federal law to carry on its business as now conducted and is duly authorized and empowered to execute and deliver the Trust Agreement and, acting pursuant thereto, this Agreement, the Lease, the Conditional Sale Agreement, the Lease Assignment and the Acknowledgment of Notice of Assignment and to fulfill and comply with the terms, conditions and provisions hereof and thereof.

(c) This Agreement, the Trust Agreement, the Lease, the Conditional Sale Agreement, the Lease Assignment and the Acknowledgment of Notice of Assignment have been duly authorized, executed and delivered by the Owner-Trustee and, assuming due authorization, execution and delivery thereof by the other parties thereto, are valid, legal and binding agreements of the Owner-Trustee, enforceable against the Owner-Trustee in accordance with their terms.

(d) The Owner-Trustee is not entering into this Agreement, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it in its individual capacity, either Owner, Builder, any Investor or the Lessee is a party in interest, all within the meaning of ERISA.

7. The obligation of the Agent to make payment to any Builder on any Closing Date (as defined in the Conditional Sale Agreement) pursuant to the Assignment shall be subject to the conditions precedent to the Owner-Trustee's obligation to purchase and pay for the Equipment as provided in Paragraph 8 hereof having been satisfied or waived and to the receipt by the Agent as provided in the second

paragraph of Paragraph 8 hereof on or prior to the first date of delivery of any unit of Equipment under the Conditional Sale Agreement (such date hereinafter called the First Delivery Date) of the following documents, dated on or not more than 10 days prior to said First Delivery Date:

(a) An opinion of Messrs. Cravath, Swaine & Moore, special counsel for the Investors and the Agent, to the effect that

(i) this Agreement, assuming due authorization, execution and delivery by the Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Owner-Trustee and each Builder and is a legal, valid and binding instrument enforceable against the Owner-Trustee and each Builder in accordance with its terms;

(iii) the Lease has been duly authorized, executed and delivered and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iv) the Assignment has been duly authorized, executed and delivered by each Builder and the Agent and is a legal, valid and binding instrument, enforceable against each Builder in accordance with its terms;

(v) the Lease Assignment and the Consent have been duly authorized, executed and delivered and each is a legal, valid and binding instrument;

(vi) the Agent is vested with all the rights, titles, interests, powers and privileges of each Builder purported to be assigned to it by the Assignment and, upon settlement for such Builder's units of Equipment pursuant to and in accordance with the Assignment, the Agent will have a valid security interest therein;

(vii) the Conditional Sale Agreement, the Assignment, the Lease, the Lease Assignment and the Consent have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for publication of notice of such deposit in *The Canada Gazette* in accordance with said Section 86, and no other filing, recording or deposit (or giving notice) with any other Federal, state or local government is necessary in order to protect the rights of the Agent therein or in the Equipment in any state of the United States of America or under the Lease in Canada or any Province thereof;

(viii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Agreement, the Conditional Sale Agreement, the Lease, the Assignment, the Lease Assignment and the Consent;

(ix) under the circumstances contemplated by this Agreement it is not necessary to register the Conditional Sale Agreement, the Assignment or any certificate of interest delivered pursuant hereto under the Securities Act of 1933, as in effect on the date of such opinion, or to qualify the Conditional Sale Agreement or any other instrument or agreement contemplated hereby or thereby under the Trust Indenture Act of 1939, as in effect on the date of such opinion;

(x) the legal opinions referred to in subparagraphs (b), (c), (d) and (e) of this Paragraph 7 are satisfactory in form and scope to said special counsel and that in their opinion the Investors, the Agent and they are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Agreement as the Investors may reasonably request.

(b) An opinion of special counsel for each Owner, to the effect set forth in subparagraphs (a), (b) and (c) of Paragraph 4 and in clause (viii) of subparagraph (a) of this Paragraph 7, insofar as such matters relate to such Owner.

(c) An opinion of counsel for the Lessee, to the effect set forth in subparagraphs (a), (b), (c), (e) and (f) of Paragraph 3 and to the further effect that

(i) other than liens and encumbrances which might attach and will be subject and subordinate to the right, title and interest of the Agent and Owner-Trustee, no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter will attach to such Equipment or in any manner affects or will affect adversely the right, title and interest of the Owner-Trustee or the Owners or the Agent therein; and

(ii) neither the execution and delivery of this Agreement, the Lease, the Consent or the Indemnity Agreements nor the consummation of the transactions herein and therein contemplated nor the fulfillment of, nor compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which it is or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee or upon the Equipment pursuant to the terms of any such agreement or instrument, other than any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Agent.

(d) An opinion of counsel for each Builder to the effect set forth in clause (vi) of subparagraph (a) of this Paragraph 7 and to the further effect that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and the Assignment have been duly authorized, executed and delivered by such Builder and, assuming due authorization, execution and delivery by the Owner-Trustee and the Agent, respectively, are legal and valid instruments binding on such Builder, enforceable in accordance with their respective terms.

(e) An opinion of counsel for the Owner-Trustee to the effect set forth in subparagraphs (a) and (b) of Paragraph 6 and to the further effect that

(i) this Agreement, the Lease and the Acknowledgment of Notice of Assignment have been duly authorized, executed and delivered by the Owner-Trustee; and

(ii) the Conditional Sale Agreement, the Lease Assignment and the Trust Agreement have been duly authorized, executed and delivered by the Owner-Trustee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding instruments binding upon the parties thereto and enforceable in accordance with their terms.

(f) A Certificate of an officer of the Lessee to the effect that the Lessee's representations and warranties contained in this Agreement are true on and as of the First Delivery Date, with the same effect as though made on such date, that the Lessee is not currently in default nor does a condition exist nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under this Agreement or the Lease and that since the date of its last published annual report there has been no material adverse change in the business or financial condition of the Lessee which would impair its ability to carry out the terms of the Lease.

(g) A Certificate of an officer of each Owner to the effect that

(i) no Federal tax liens (including tax liens filed pursuant to section 6323 of the Internal Revenue Code of 1954, as amended) or, to the best of his knowledge and belief, other tax liens have been filed and are currently in effect against such Owner which could adversely affect the interests of the Agent in the Equipment or the Lease;

(ii) no mortgage, deed of trust or other lien of any nature whatsoever now in existence which now covers or affects or which may hereafter cover or affect, any property or interest therein of such Owner, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Agent therein; and

(iii) such Owner's representations and warranties contained in this Agreement are true on and as of the First Delivery Date with the same effect as if made on such date.

In giving the opinions specified in subparagraphs (a), (b), (c), (d) and (e) of this Paragraph 7, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (a) of this Paragraph 7, counsel may rely (i) as to authorization, execution and delivery by each Builder of the documents executed by such Builder, on the opinion of counsel for such Builder and (ii) as to any matter governed by the law of any jurisdiction other than the State of New York or the United States, on the opinion of counsel for any Owner, the Owner-Trustee, any Builder or the Lessee as to such matter. In giving the opinion specified in subparagraph (c) of this Paragraph 7, counsel may assume as to any matter governed by the law of any jurisdiction other than the state of Minnesota or the United States that the law of such other jurisdiction is the same as the law of the State of Minnesota.

8. The Owner-Trustee's obligation to purchase and pay for units of Equipment on any Closing Date (as defined in the Conditional Sale Agreement) under the Conditional Sale Agreement shall be subject to the receipt, in form and scope satisfactory to counsel for the Owners, of opinions of counsel and certificates dated and to the same effect as the opinions and certificates set forth in subparagraphs (b), (c), (d), (e), (f) and (g), respectively, of Paragraph 7 hereof (unless waived by the Owner-Trustee by written notice to the Builders and to the Agent given on or prior to such Closing Date).

The Agent's obligation to make its payment to each Builder pursuant to the Assignment shall be subject to the receipt by the Agent and by Messrs. Cravath, Swaine & Moore on or prior to the First Delivery Date of the documents (other than the opinion set forth in subparagraph (a) of Paragraph 7 hereof which shall be delivered to the Agent on said Date) required to be delivered to the Agent pursuant to Paragraph 7 hereof. The Lessee shall furnish or cause to be furnished to the Agent, the Owner-Trustee and each Owner ten days' prior written notice of the First Delivery Date.

9. Subject to the terms and conditions hereof, upon the delivery to the Owner-Trustee under the Conditional Sale Agreement of the Equipment and the receipt by the Agent of the delivery papers with respect thereto to be delivered in accordance with the Assignment, the Agent will on each Closing Date under the Conditional Sale Agreement:

(a) pay to each Builder whose Equipment is being settled for on such Closing Date in accordance with the Assignment (and subject to the conditions specified in Section 4 thereof) out of moneys paid to the Agent pursuant to Paragraph 2 hereof and then on deposit with the Agent an amount equal to the Conditional Sale Indebtedness with respect to the units of Equipment then being settled for; and

(b) if such moneys then on deposit are insufficient to make such payment, promptly upon receipt of notice of closing with respect to such Equipment under the Conditional Sale Agreement, sell such portion of the Investments as may be necessary in order to provide sufficient funds for such payment and use the funds so derived, together with interest received on the Investments and any Investment Deficiency paid by the Owner-Trustee as contemplated by Paragraph 2 hereof and held by the Agent, to make such payment to such Builder required to be made on such Closing Date pursuant to the Assignment.

If, on the earlier of (1) the last Closing Date under the Conditional Sale Agreement, (2) the date of any Default as to which the Agent has actual knowledge or (3) June 30, 1979 (the earlier of said dates being hereinafter called the Cut-Off Date), the aggregate Conditional Sale Indebtedness will be less than the amount theretofore deposited with the Agent pursuant to Paragraph 2 hereof (less any amounts of Conditional Sale Indebtedness paid or prepaid pursuant to Paragraph 10 hereof) (the amount of such difference being hereinafter called the Excess Investment), the Agent will promptly (i) notify the Investors thereof, (ii) sell all Investments then held by the Agent as promptly as possible and (iii) against surrender by each Investor to the Agent of the certificate or certificates of interest theretofore delivered by the Agent in respect of which a repayment is to be made, as hereinafter provided, for a new certificate or certificates of interest evidencing each Investor's actual investment in the aggregate Conditional Sale Indebtedness (and a new schedule of payments reflecting such investment) apply on the Cut-Off Date (or as promptly

thereafter as possible) (a) the balance of the funds on deposit with the Agent pursuant to Paragraph 2 hereof and (b) all proceeds of the sale of Investments and interest received by the Agent on Investments, together with any Investment Deficiency paid by the Owner-Trustee as contemplated by Paragraph 2 and moneys paid to the Agent pursuant to the last paragraph of this Paragraph 9 to the pro rata repayment of a portion of the investment made by the Investors hereunder up to the amount of the Excess Investment without premium, together with interest on such repayment as provided in clause (a) of the next paragraph hereof. Each Investor, at its option, in lieu of surrendering its certificate or certificates of interest as provided in the preceding sentence, may make appropriate notation on such certificate or certificates of interest of repayment of a portion of its investment and notify the Agent in writing that such notation has been made. Any remaining balance of such funds and proceeds and interest thereon received by the Agent, after payment of all fees and expenses of the Agent in connection with the purchase and sale of Investments, shall be paid by the Agent to the Lessee so long as the Agent has no actual knowledge of a Default. If such balance is not sufficient to pay such fees and expenses, the Owner-Trustee will pay any deficiency.

The Owner-Trustee will pay to the Agent such amounts as will enable the Agent to pay to each Investor (a) on the Cut-Off Date (or as promptly thereafter as practicable) an amount equal to interest on the Excess Investment, if any, repaid to such Investor pursuant to the immediately preceding paragraph on said date for the period from the applicable Deposit Dates, or from the last date to which interest has been paid, as the case may be, to the date of such payment, calculated at its applicable Debt Rate per annum and (b) on each of January 3, 1979, and July 3, 1979, such amount, if any, as, when added to the interest received by the Agent under the Conditional Sale Agreement on such date, will enable the Agent to pay to each Investor an amount equal to interest at its applicable Debt Rate per annum on the unrepaid investment of such Investor from its applicable Deposit Dates, or from the last date to which interest has been paid, as the case may be, to such date. The payments to be made by the Owner-Trustee pursuant to the preceding sentence and the payments to be made by the Owner-Trustee in respect of any Investment Deficiency pursuant to the third paragraph of Paragraph 2 hereof shall be payable out of funds received by the Owner-Trustee (or by the Agent for the account of the Owner-Trustee) from the Owners, which funds the Owners severally agree to provide in proportion to their respective Beneficial Interests as set forth in Section 1.04 of the Trust Agreement.

10. The Agent will accept payments made to it by or for the account of the Owner-Trustee pursuant to the Conditional Sale Agreement and the Assignment on account of the principal of or accrued interest on the Conditional Sale Indebtedness and will apply such payments promptly first, to the pro rata payment to each Investor of interest payable on the Conditional Sale Indebtedness, and second, to the pro rata payment to each Investor of the installments of Conditional Sale Indebtedness in the order of maturity thereof until the same shall have been paid in full.

The Agent will accept all sums paid to it pursuant to Article 7 of the Conditional Sale Agreement with respect to Casualty Occurrences (as therein defined) and will apply such sums to the pro rata prepayment of each of the installments of the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such installment), without premium, together with interest accrued and unpaid on such prepaid Conditional Sale Indebtedness and will distribute such prepayment and interest thereon to the Investors. The Agent will furnish to the Investors a revised schedule of payments showing the reduction of its interest in the installments of the Conditional Sale Indebtedness remaining unpaid and the interest payable thereon.

Notwithstanding anything to the contrary contained herein, if a Declaration of Default (as defined in the Conditional Sale Agreement) is in effect, all moneys held by or coming into the possession of the Agent under the Conditional Sale Agreement, the Assignment, the Lease or the Lease Assignment applicable to the payment or prepayment of Conditional Sale Indebtedness or interest thereon (including, without limitation, the net proceeds of any repossession and sale or lease of any unit of the Equipment after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease or otherwise hereunder in connection with the Conditional Sale Agreement and the Assignment which shall not theretofore have been reimbursed to the Agent by the Owner-Trustee pursuant to the Conditional Sale Agreement) shall be distributed immediately by the Agent pro rata to the Investors; and the Agent shall otherwise take such action as is referred to in this Paragraph 10.

All payments to be made by the Agent hereunder shall (subject to timely receipt by the Agent of available funds) be made by check mailed to the Investors on the date such payment is due or, upon written request of an Investor, by bank wire of immediately available funds to such Investor at such address as may be specified to the Agent in writing.

So long as, to the actual knowledge of the Agent, no Default shall have occurred and be continuing, the Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights or taking or refraining from taking any action which may be vested in it, or which it may be entitled to assert or take, hereunder or under the Conditional Sale Agreement, the Assignment, the Lease or the Lease Assignment except as otherwise specifically provided herein. The Agent shall not incur any liability hereunder or otherwise in acting upon any notice, certificate or other paper or instrument believed by it to be genuine and signed by the proper party or parties, or with respect to anything which it may do or refrain from doing in the exercise of its best judgment, or which may seem to it to be necessary or desirable in the premises, except liability resulting from its own misconduct or negligence. In case the Agent shall have actual knowledge of the occurrence of a Default it shall promptly notify the Owner-Trustee, the Lessee and the Investors thereof. The Agent shall take such action and assert such rights under the Conditional Sale Agreement and the Lease as shall be agreed upon by Investors holding interests totaling 50% or more of the aggregate Conditional Sale Indebtedness then outstanding. In case the Agent is required to take action hereunder, it shall be indemnified against any liability or expense, including reasonable counsel fees, in connection with taking such action or asserting such rights by the Investors in proportion to their respective interests in the aggregate Conditional Sale Indebtedness then outstanding.

The Agent may consult with legal counsel of its own choice and shall not be under any liability for any action taken or suffered in good faith by it in accordance with the opinion of such counsel.

The Agent will promptly mail or deliver one counterpart or copy of all notices, statements, documents or schedules received by it from the Owner-Trustee or the Lessee pursuant to this Agreement, the Conditional Sale Agreement, the Assignment, the Lease or the Lease Assignment to each Investor which shall have requested the same in writing.

All notices, instructions, directions and approvals to be delivered hereunder to the Agent by an Investor shall be in writing signed by an officer, assistant officer, manager, assistant manager or authorized employee of such Investor, and the Agent may rely on any notice, instruction, direction or approval so signed.

The Agent does not make any representation or assume any responsibility with respect to (i) the validity of the Conditional Sale Agreement, the Lease, the Assignment, the Lease Assignment or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or (ii) the value of or the title to the Equipment.

In the event of any dispute with respect to the delivery or ownership or right to possession of funds or documents at any time held by the Agent hereunder, or with respect to title to any unit of the Equipment, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents and title to such unit of the Equipment until such dispute shall have been settled either by agreement of the Investors or by final order, decree or judgment of a court of competent jurisdiction.

The Agent shall be entitled to terminate its duties and responsibilities hereunder by giving written notice to the Investors that it desires to terminate such duties and responsibilities on a date (at least 30 days subsequent to the giving of such notice) stated in said notice it being understood and agreed that the Agent shall also give such notice if it is directed to do so by Investors holding interests totaling 50% or more of the aggregate Conditional Sale Indebtedness then outstanding. If, prior to the date stated in said notice, Investors holding interests totaling 50% or more of the Conditional Sale Indebtedness then outstanding shall have requested in writing that the Agent assign to a person or institution designated by such holders all right, title and interest of the Agent under the Conditional Sale Agreement and the Assignment and in and to the Equipment and the Lease, the Agent shall comply with such request. In the event that such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act hereunder (which successor shall be a bank or trust

company located in the Borough of Manhattan, City and State of New York, Chicago, Illinois, or Baltimore, Maryland, having capital and surplus aggregating at least \$50,000,000) and to assign to such successor, subject to the provisions of this Agreement, all such right, title and interest of the Agent. Upon such assignment by the Agent to a person or institution designated by such Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall thereupon be relieved of all duties and responsibilities hereunder.

11. The Lessee will deliver or cause to be delivered (A) to the Owner-Trustee, the Agent, the Owners and each Investor which shall so request, as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer, any Assistant Treasurer or the Assistant Vice President, Financial Planning of the Lessee stating that he has reviewed the activities of the Lessee during such year and that, to the best of his knowledge, the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein and in the Lease, or if an Event of Default (as defined in the Lease) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (B) on request by the Owner-Trustee, the Agent, any Owner or any Investor, (i) as soon as available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by any Vice President or the Treasurer of the Lessee, as appropriate, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of the balance sheet of the Lessee as at the end of such fiscal year, and of the statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, certified by a firm of nationally recognized independent certified public accountants selected by the Lessee, and (iii) as soon as available, a copy of each Annual Report to the Securities and Exchange Commission which is required to be filed by the Lessee.

12. The Owners shall pay, or cause to be paid, (i) the reasonable fees and disbursements of Messrs. Cravath, Swaine & Moore as special counsel for the Agent and the Investors and the cost of producing and reproducing this Agreement, the Lease, the Trust Agreement, the Conditional Sale Agreement, the Assignment, the Lease Assignment, the Consent, the Indemnity Agreements and any amendments, supplements or waivers with respect hereto or thereto, (ii) the reasonable fees, costs and disbursements of the Agent and the Owner-Trustee except those subsequent to any termination of the Lease by the Agent or attributable to periods during a continuance of a Declaration of Default under Article 16 of the Conditional Sale Agreement (which shall be paid by the Lessee) and (iii) the expenses and fees payable to Merrill Lynch Pierce Fenner & Smith Inc. in connection with the arranging of long-term financing by the Investors, not in excess of 3/8ths of 1% of the Conditional Sale Indebtedness. The Lessee shall bear the costs of filing, recording and giving public notice or publication as to such filing and recording of the Lease, the Conditional Sale Agreement, the Assignment and the Lease Assignment and any amendments or supplements thereto with the Interstate Commerce Commission and with the Registrar General of Canada, as contemplated by subparagraph (f) of Paragraph 3 hereof. The Investors shall have no liability for any of the aforesaid fees, costs, disbursements and expenses or for any other expenses.

13. All deposits to be made hereunder by the Investors with the Agent shall be wired to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mr. Howard Broadfoot, Treasurer, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the deposit is "Re: BN 5/1/78".

All documents and other funds deliverable hereunder to the Agent shall be delivered to it at its address at P.O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department, or as the Agent may otherwise specify.

All documents, notices and funds deliverable hereunder to the Owner-Trustee shall be delivered to it at its address at 130 John Street, New York, New York 10038, Attention of Corporate Trust and Agency Division, or as the Owner-Trustee may otherwise specify, with copies to each of the Owners at their addresses set forth in Appendix II hereto.

All documents and funds deliverable hereunder to the Investors shall be delivered to them at their respective addresses set forth in Appendix I hereto, or as they may otherwise specify.

All documents deliverable hereunder to Messrs. Cravath, Swaine & Moore shall be delivered to them at One Chase Manhattan Plaza, New York, New York 10005.

14. In the event that the Owner-Trustee or the Lessee shall have knowledge of an Event of Default under the Lease or an event of default under the Conditional Sale Agreement, such party shall give prompt telephonic notice (confirmed in writing) thereof to the Agent.

15. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the undertakings and agreements herein made on the part of the Owner-Trustee (except its representations and warranties under Paragraph 6 hereof) are each and every one of them made and intended not as personal representations, undertakings and agreements by the Owner-Trustee in its individual capacity or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against it or the Owners (except for their respective obligations under Section 1.04 of the Trust Agreement) on account of any undertaking or agreement hereunder of the Owner-Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Agent and the Investors and by all persons claiming by, through or under the Lessee, the Agent and the Investors; *provided, however*, that the Lessee, the Agent and the Investors or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

16. The terms of this Agreement and all rights and obligations of the parties hereto hereunder shall be governed by the laws of the State of New York. Such terms, rights and obligations may not be changed orally but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

17. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all the parties so long as all counterparts shall be signed by the Agent; and the Owner-Trustee, each Owner, the Lessee and each Investor shall sign a counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

BURLINGTON NORTHERN INC.,

by
Assistant Vice President,
Financial Planning

Attest:

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent as aforesaid,

by
Corporate Trust Officer

by
Assistant Vice President

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee as aforesaid,

by
Assistant Vice President

J. P. MORGAN INTERFUNDING CORP.,

by
Vice President

CONNELL RICE & SUGAR CO., INC.
(Connell Leasing Company Division),

by
President

STATE OF NEW JERSEY—COMMON PENSION
FUND B

by

COMMONWEALTH LIFE INSURANCE
COMPANY,

by
Second Vice President—Investments

PEOPLES LIFE INSURANCE COMPANY,
WASHINGTON, D.C.,

by
Second Vice President—Investments

HOME SECURITY LIFE INSURANCE
COMPANY,

by
Second Vice President—Investments

GEORGIA INTERNATIONAL LIFE
INSURANCE COMPANY,

by.....
Second Vice President—Investments

HOME LIFE INSURANCE COMPANY OF
AMERICA,

by.....
Second Vice President—Investments

NATIONAL TRUST LIFE INSURANCE
COMPANY,

by.....
Second Vice President—Investments

NATIONAL STANDARD LIFE INSURANCE
COMPANY,

by.....
Second Vice President—Investments

THE PHILADELPHIA SAVING FUND SOCIETY,

by.....
Assistant Vice President

JEFFERSON STANDARD LIFE INSURANCE
COMPANY,

by.....
Vice President

PILOT LIFE INSURANCE COMPANY,

by.....
Vice President

UNION MUTUAL LIFE INSURANCE
COMPANY,

by.....
Vice President

THE WESTERN SAVING FUND SOCIETY OF
PHILADELPHIA,

by.....
Senior Vice President

GULF LIFE INSURANCE COMPANY,

by.....
Vice President—Investments

**AMERICAN-AMICABLE LIFE INSURANCE
COMPANY,**

by.....
Assistant Secretary

**INTERSTATE LIFE AND ACCIDENT
INSURANCE COMPANY,**

by.....
Assistant Secretary

**THE INDEPENDENT LIFE AND ACCIDENT
INSURANCE COMPANY,**

by.....
Vice President—Securities

**UNITED BENEFIT LIFE INSURANCE
COMPANY,**

by.....
Second Vice President

**WASHINGTON NATIONAL INSURANCE
COMPANY,**

by.....
Senior Vice President

APPENDIX I

TO PARTICIPATION AGREEMENT

Name and Address	Interest Rate	Deposit Date*	Investment†
State of New Jersey—Common Pension Fund B..... Department of the Treasury Division of Investment P.O. Box 1829 Trenton, New Jersey 08625 <i>Attention of Roland M. Machold, Director, Division of Investment</i> (See Note 1)	8.80%	July 25, 1978	\$ 7,303,650
Commonwealth Life Insurance Company..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 2)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	365,182.50 415,717.81 217,435.85 —0— <hr/> 998,336.16
Peoples Life Insurance Company, Washington, D.C..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 3)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	365,182.50 415,717.81 217,435.85 —0— <hr/> 998,336.16
Home Security Life Insurance Company..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 4)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	182,591.25 207,858.91 108,717.92 —0— <hr/> 499,168.08
Georgia International Life Insurance Company..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 5)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	182,591.25 207,858.91 108,717.92 —0— <hr/> 499,168.08
Home Life Insurance Company of America..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 6)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	182,591.25 207,858.90 108,717.94 —0— <hr/> 499,168.46
National Trust Life Insurance Company..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 7)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	146,073.00 166,287.12 86,974.39 —0— <hr/> 399,334.52
National Standard Life Insurance Company..... c/o Capital Holding Corporation Post Office Box 32830 Louisville, Kentucky 40232 <i>Attention of Securities Department</i> (See Note 8)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	36,518.25 41,571.78 21,743.58 —0— <hr/> 99,833.61
The Philadelphia Saving Fund Society..... 1212 Market Street Philadelphia, Pennsylvania 19107 <i>Attention of Securities Investment Department</i> (See Note 9)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	—0— —0— 329,251.46 2,665,757.00 <hr/> 2,995,008.46
Jefferson Standard Life Insurance Company..... P.O. Box 21008 Greensboro, North Carolina 27420 <i>Attention of Securities Service Division</i> (See Note 10)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	730,365.00 831,435.63 434,871.69 —0— <hr/> 1,996,672.32

<u>Name and Address</u>	<u>Interest Rate</u>	<u>Deposit Date*</u>	<u>Investment†</u>
Pilot Life Insurance Company Post Office Box 20727 Greensboro, North Carolina 27420 <i>Attention of Securities Administration (469)</i> (See Note 11)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	730,365.00 831,435.63 434,871.69 —0— <hr/> 1,996,672.32
Union Mutual Life Insurance Company 2211 Congress Street Portland, Maine 04112 <i>Attention of Investment Department</i> (See Note 12)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	730,365.00 831,435.63 434,871.69 —0— <hr/> 1,996,672.32
The Western Saving Fund Society of Philadelphia Broad and Chestnut Streets Philadelphia, Pennsylvania 19107 <i>Attention of Mrs. Ann Propper, Senior Vice President</i> (See Note 13)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	730,365.00 831,435.63 434,871.69 —0— <hr/> 1,996,672.32
Gulf Life Insurance Company c/o GULFCO Capital Management, Inc. 1301 Gulf Life Drive Jacksonville, Florida 32207 <i>Attention of Securities Division</i> (See Note 14)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	182,591.25 207,858.91 108,717.92 —0— <hr/> 499,168.08
American-Amicable Life Insurance Company c/o GULFCO Capital Management, Inc. 1301 Gulf Life Drive Jacksonville, Florida 32207 <i>Attention of Securities Division</i> (See Note 15)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	91,295.62 103,929.45 54,358.96 —0— <hr/> 249,584.03
Interstate Life and Accident Insurance Company c/o GULFCO Capital Management, Inc. 1301 Gulf Life Drive Jacksonville, Florida 32207 <i>Attention of Securities Division</i> (See Note 16)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	91,295.63 103,929.44 54,358.96 —0— <hr/> 249,584.03
The Independent Life and Accident Insurance Company One Independent Drive Jacksonville, Florida 32276 <i>Attention of Thomas Weaver, Vice President—Securities</i> (See Note 17)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	365,182.50 415,717.81 217,435.85 —0— <hr/> 998,336.16
United Benefit Life Insurance Company 3301 Dodge Street, Omaha, Nebraska 68131 <i>Attention of Investment Department</i> (See Note 18)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	365,182.50 415,717.81 217,435.85 —0— <hr/> 998,336.16
Washington National Insurance Company 1630 Chicago Avenue, Evanston, Illinois 60201 <i>Attention of Securities Investment Division</i> (See Note 19)	8.85%	August 15, 1978 October 9, 1978 Nov. 1, 1978 Dec. 1, 1978	365,182.50 415,717.81 217,435.85 —0— <hr/> 998,336.16
			<hr/> <u>\$26,272,037.00</u>

† In accordance with Paragraph 2 of this Participation Agreement, the Lessee has the right to increase the investment of each Investor by not more than five per cent.

* In accordance with Paragraph 2 of this Participation Agreement, any Deposit Date of an Investor may be moved forward or delayed by not more than four weeks by notice given by the Lessee to the Agent and the Investor not later than ten days prior to the earlier of (i) the regularly scheduled Deposit Date or (ii) the Deposit Date to which the change is to be made.

Note 1—All payments of principal and interest by bank wire to the Federal Reserve Bank of Philadelphia, for credit to Account New Jersey National Bank Fund #092, Account 2435- Code 8, Attention: Ernie Bloom:

Note 2—All payments of principal and interest to:

Attention: Securities Department
Commonwealth Life Insurance Company
Commonwealth Building
Post Office Box 32800
Louisville, Kentucky 40232

Note 3—All payments of principal and interest to:

Attention: Treasurer's Department
Peoples Life Insurance Company, Washington, D.C.
601 New Hampshire Avenue, N.W.
Washington, D.C. 20048

Note 4—All payments of principal and interest to:

SALKELD & CO.
c/o Bankers Trust Company
Post Office Box 704
Church Street Station
New York, New York 10005
Certificate to be registered
to SALKELD & CO. and sent
to the above address.

Note 5—All payments of principal and interest to:

Georgia International Life Insurance Company
c/o Trust Company of Georgia
Trust Department
Custodian Account #4061
Post Office Box 4655
Atlanta, Georgia 30302

Note 6—All payments of principal and interest to:

Attention: Treasurer's Department
Home Life Insurance Company of America
601 New Hampshire Avenue, N.W.
Washington, D.C. 20048

Note 7—All payments of principal and interest to:

Attention: Treasurer's Department
National Trust Life Insurance Company
2701 Union Avenue Extended
Memphis, Tennessee 38112

Note 8—All payments of principal and interest to:

National Standard Life Insurance Company
c/o Trust Department
Pan American Bank of Orlando, N.A.
250 North Orange Avenue
Post Office Box 2953
Orlando, Florida 32802

Note 9— Certificate to be registered in name of Duncan & Co; payments by bank wire transfer to the account of The Philadelphia Saving Fund Society, Acct. No. 077-261-6, at First Pennsylvania Bank, N.A., 30th and Market Streets, Philadelphia, Pennsylvania, with instructions to notify the Treasurer of the Philadelphia Saving Fund Society, by telephone and in writing, of the amounts of principal and interest being paid or prepaid and specifying the source of payment.

Note 10— All payments of principal and interest to be made by bank wire transfer of immediately available funds to North Carolina National Bank, North Carolina (Greensboro Office) for credit of Jefferson Standard Life Insurance Company, Account No. 020-000-089. Attention of C.C. Pearman, Securities Service Division.

Note 11— Payments by bank wire transfer to North Carolina National Bank, 101 West Friendly Avenue, Greensboro, North Carolina 27401, for credit to Pilot Life Insurance Company, Account No. 021-168-018.

Note 12— Payments of principal and interest by bank wire transfer to Maine National Bank, 400 Congress Street, Portland, Maine 04112, for the account of Union Mutual Life Insurance Company, Account No. 000-0062-0.

Note 13— Payment of principal and interest by bank wire transfer of immediately available funds to The Philadelphia National Bank, Fifth and Market Streets, Philadelphia, Pennsylvania 19101, for credit to Account No. 900-0090.

In case of all notices in respect of payment to The Western Saving Fund Society of Philadelphia, Broad and Chestnut Streets, Philadelphia, Pennsylvania 19107, Attention of the Treasury Department.

Note 14—Address for payments:

By crediting in the form of federal funds bank wire transfer and providing sufficient information to identify the source and application of funds to:

Account No. 50-008-334
Bankers Trust Company
280 Park Avenue
New York, New York 10017

Please register one certificate in the name of TOBON & CO.

Note 15—Address for payments:

By crediting in the form of federal funds bank wire transfer and providing sufficient information to identify the source and application of funds to:

Account No. 00-022-744
Bankers Trust Company
280 Park Avenue
New York, New York 10017

Please register one certificate of interest in the name of American-Amicable Life Insurance Company.

Note 16—Address for payments:

By crediting in the form of federal funds bank wire transfer and providing sufficient information to identify the source and application of funds to:

Account No. 92064
Bank of New York
48 Wall Street
New York, New York 10015

Please register one certificate of interest in the name of HARE & CO.

Note 17—All payments of principal and interest to:

The Independent Life and Accident Insurance Company,
One Independent Drive,
Jacksonville, Florida 32276,
Attention of Investment Accounting Department.

Note 18— Payment on account of the indebtedness is to be made by wire transfer to Omaha National Bank, 17th & Farnam Streets, Omaha, Nebraska 68102, account of United Benefit Life Insurance Company, Account No. 490-7-390, with such wire transfer to identify the source and application of such funds.

Note 19— Certificate of Interest to be registered to WNIC & CO. and sent to WNIC & CO., care of Trust Department, State National Bank, P.O. Box 1670, Evanston, Illinois 60204. Payments of principal and/or interest are to be forwarded to the same address.

APPENDIX II

Connell Leasing Company Division,
45 Cardinal Drive
Westfield, New Jersey 07902

Attention of Grover Connell, President.

J. P. Morgan Interfunding Corp.
522 Fifth Avenue
New York, New York 10022

Attention of Lease Administration